

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
LOUIS MYERS  
FISH & RICHARDSON P.C.  
225 FRANKLIN STREET  
BOSTON, MASSACHUSETTS 02110-2804

# PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing  
(day/month/year) **10 MAR 2005**

Applicant's or agent's file reference

10296-066WO1

### FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US04/08906

International filing date (day/month/year)

24 March 2004 (24.03.2004)

Priority date (day/month/year)

24 March 2003 (24.03.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): G01J 4/00; C12Q 1/68 and US Cl.: 356/364, 369, 322, 327

Applicant

PERKINELMER LAS, INC.

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

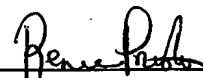
Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 305-3230

Authorized officer

Hoa Q. Pham

Telephone No. (571) 272-2426



**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/08906

**Box No. I Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US04/08906

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO
Inventive step (IS)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO
Industrial applicability (IA)	Claims <u>Please See Continuation Sheet</u>	YES
	Claims <u>Please See Continuation Sheet</u>	NO

**2. Citations and explanations:**

Claims 1-7, 10, 11, 28, 30-31, 33-34, 43, and 45 lack novelty under PCT Article 33(2) as being anticipated by Hill (US 6,252,668).

Regarding claims 1, 3, 28, 43, Hill discloses a polarizing beam splitter (171), that substantially reflects light of a first polarization and substantially transmits light of a second polarization orthogonal to the first polarization; a reflector (192) positioned to reflect light transmitted by the PBS towards the PBS; and a detector (179) positioned to detect light reflected by the PBS and/or light reflected by the reflector (see Figure 2a).

Regarding claim 2, the angle between the PBS and reflector is zero.

Regarding claim 4, the angle between the first beam reflected from the PBS and the second beam transmitted from the PBS is 90 degree (see Figure 2a).

Regarding claims 5-6 and 30-31, Hill teaches that the use of wavelength of 633 um (column 8, line 26).

Regarding claim 10, see polarizer (177) in Figure 2a.

Regarding claim 11, see sample (1122) and components in Figure 6a.

Regarding claims 33-34, reflector (192) is a mirror.

Regarding claim 45, the sample in Figure 6a is a mask or wafer.

Claims 12-15, 18-27, 37-38, 47 and 48 lack an inventive step under PCT Article 33(3) as being obvious over Hill.

Regarding claims 12-13, 21-27, 37-38, and 47-48; Hill does not explicitly teach that the polarization beam splitter can be used in a system for detecting fluorescence compound; however, it would have been obvious to use a polarization beam splitter in a system which detects fluorescence compound if polarization components are used for detection.

Regarding claims 14-15, see polarization light source 101 in column 18, lines 6-10 of Hill

Regarding claims 18-20, see sample (1122) in figure 6a and polarization components in Figure 2a.

Claims 8, 9, 16, 17, 29, 32, 35, 36, 39-42, 44, 46, and 49 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest all the steps in independent claim 39 and the limitations claimed in claims 8, 9, 16-17, 29, 32, 35-36, 44, 46, and 49.

Claims 1-49 meet the criteria set out in PCT Article 33(4), because the claimed subject matter is useful in the industry.

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US04/08906

**Supplemental Box**

In case the space in any of the preceding boxes is not sufficient.

**V.1. Reasoned Statements:**

The opinion as to Novelty was positive (Yes) with respect to claims 8, 9, 12-27, 29, 32, 35-42, 44, 46-49

The opinion as to Novelty was negative (No) with respect to claims 1-7, 10-11, 28, 30, 31, 33, 34, 43, 45

The opinion as to Inventive Step was positive (Yes) with respect to claims 8, 9, 16-17, 29, 32, 35, 36, 39-42, 44, 46, 49

The opinion as to Inventive Step was negative (NO) with respect to claims 1-7, 10-15, 18-28, 30-31, 33-34, 37-38, 43, 45, 47-48

The opinion as to Industrial Applicability was positive (YES) with respect to claims 1-49

The opinion as to Industrial Applicability was negative (NO) with respect to claims NONE

## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers; claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under Article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

It must be in the language in which the international application is to be published.

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments and any accompanying statement, under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the time of filing the amendments (and any statement) with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments (and of any statement) and, where required, a translation of such amendments for the procedure before that Authority (see Rules 55.3(a) and 62.2, first sentence). For further information, see the Notes to the demand form (PCT/IPEA/401).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see the *PCT Applicant's Guide*, Volume II.